

**Introduced by Senator Poochigian**

February 9, 2005

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An act to amend Section 1872.83 of the Insurance Code, relating to workers' compensation.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 179, as introduced, Poochigian. Workers' compensation: fraud prevention.

Existing law requires the Insurance Commissioner to ensure that the Bureau of Fraudulent Claims within the Department of Insurance aggressively pursues all reported incidents of probable workers' compensation fraud, as defined. Existing law establishes the Fraud Assessment Commission for specified purposes relating to workers' compensation fraud.

This bill would allow the Fraud Assessment Commission to hire an executive officer and staff to support its activities.

Existing law requires that an annual assessment be imposed on workers' compensation insurers for purposes relating to workers' compensation fraud, and that specified portions of these funds be provided to the Bureau of Fraudulent Claims for enhanced investigative efforts, and to district attorneys for investigatory and prosecutorial purposes.

This bill would specify the process by which district attorneys may apply for grants under these provisions, and would impose certain requirements on the Insurance Commissioner with respect to administering these grants.

The bill would delete the references to the Bureau of Fraudulent Claims and replace them with the Fraud Division.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the ~~Bureau of Fraudulent Claims~~ *Fraud Division of the Department of Insurance* aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. ~~The Bureau of Fraudulent Claims~~ *Fraud Division* shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings

1 and other official commission business, and shall also receive  
2 their actual and necessary traveling expenses incurred in the  
3 performance of commission duties. Payment of per diem and  
4 travel expenses shall be made from the Workers' Compensation  
5 Fraud Account in the Insurance Fund, established in paragraph  
6 (4), upon appropriation by the Legislature. *The commission may*  
7 *hire an executive officer and staff to support the activities of the*  
8 *commission. All personnel of the commission shall be under the*  
9 *supervision of the chair or an executive officer to whom he or she*  
10 *delegates this responsibility. All personnel shall be appointed*  
11 *pursuant to the State Civil Service Act (Part 2 (commencing with*  
12 *Section 18500) of Division 5 of Title 2 of the Government Code),*  
13 *except for the one exemption allowed by subdivision (e) of*  
14 *Section 4 of Article VII of the California Constitution.*

15 (2) In determining the aggregate amount of the assessment, the  
16 Fraud Assessment Commission shall consider the advice and  
17 recommendations of the ~~Bureau of Fraudulent Claims~~ *Fraud*  
18 *Division* and the commissioner.

19 (3) The aggregate amount of the assessment shall be collected  
20 by the Director of Industrial Relations pursuant to Section 62.6 of  
21 the Labor Code. The Fraud Assessment Commission shall  
22 annually advise the Director of Industrial Relations, not later than  
23 March 15, of the aggregate amount to be assessed for the next  
24 fiscal year.

25 (4) The amount collected, together with the fines collected for  
26 violations of the unlawful acts specified in Sections 1871.4,  
27 11760, and 11880, Section 3700.5 of the Labor Code, and  
28 Section 549 of the Penal Code, shall be deposited in the  
29 Workers' Compensation Fraud Account in the Insurance Fund,  
30 which is hereby created, and may be used, upon appropriation by  
31 the Legislature, only for enhanced investigation and prosecution  
32 of workers' compensation fraud and of willful failure to secure  
33 payment of workers' compensation as provided in this section.

34 (c) For each fiscal year, the total amount of revenues derived  
35 from the assessment pursuant to subdivision (b) shall, together  
36 with amounts collected pursuant to fines imposed for unlawful  
37 acts described in Sections 1871.4, 11760, and 11880, Section  
38 3700.5 of the Labor Code, and Section 549 of the Penal Code,  
39 not be less than three million dollars (\$3,000,000). Any funds  
40 appropriated by the Legislature pursuant to subdivision (b) that

1 are not expended in the fiscal year for which they have been  
2 appropriated, and that have not been allocated under subdivision  
3 ~~(f)~~ (g), shall be applied to satisfy for the immediately following  
4 fiscal year the minimum total amount required by this  
5 subdivision. In no case may that money be transferred to the  
6 General Fund.

7 (d) After incidental expenses, at least 40 percent of the funds  
8 to be used for the purposes of this section shall be provided to the  
9 ~~Bureau of Fraudulent Claims~~ *Fraud Division* of the Department  
10 of Insurance for enhanced investigative efforts, and at least 40  
11 percent of the funds shall be distributed to district attorneys,  
12 pursuant to a determination by the commissioner with the advice  
13 and consent of the ~~bureau~~ *Fraud Division* and the Fraud  
14 Assessment Commission, as to the most effective distribution of  
15 moneys for purposes of the investigation and prosecution of  
16 workers' compensation fraud cases and cases relating to the  
17 willful failure to secure the payment of workers' compensation.  
18 Each district attorney seeking a portion of the funds shall submit  
19 to the commissioner an application setting forth in detail the  
20 proposed use of any funds provided. A district attorney receiving  
21 funds pursuant to this subdivision shall submit an annual report  
22 to the commissioner with respect to the success of his or her  
23 efforts. Upon receipt, the commissioner shall provide copies to  
24 the ~~bureau~~ *Fraud Division* and the Fraud Assessment  
25 Commission of any application, annual report, or other  
26 documents with respect to the allocation of money pursuant to  
27 this subdivision. Both the application for moneys and the  
28 distribution of moneys shall be public documents. Information  
29 submitted to the commissioner pursuant to this section  
30 concerning criminal investigations, whether active or inactive,  
31 shall be confidential.

32 (e) If a district attorney is determined by the commissioner to  
33 be unable or unwilling to investigate and prosecute workers'  
34 compensation fraud claims or claims relating to the willful failure  
35 to secure the payment of workers' compensation, the  
36 commissioner shall discontinue distribution of funds allocated for  
37 that county and may redistribute those funds according to this  
38 subdivision.

39 (1) The commissioner shall promptly determine whether any  
40 other county could assert jurisdiction to prosecute the fraud

claims or claims relating to the willful failure to secure the payment of workers' compensation that would have been brought in the nonparticipating county, and if so, the commissioner may award funds to conduct the prosecutions redirected pursuant to this subdivision. These funds may be in addition to any other fraud prosecution funds or claims relating to the willful failure to secure the payment of workers' compensation prosecution otherwise awarded under this section. Any district attorney receiving funds pursuant to this subdivision shall first agree that the funds shall be used solely for investigating and prosecuting those cases of workers' compensation fraud or claims relating to the willful failure to secure the payment of workers' compensation that are redirected pursuant to this subdivision and submit an annual report to the commissioner with respect to the success of the district attorney's efforts. The commissioner shall keep the Fraud Assessment Commission fully informed of all reallocations of funds under this paragraph.

(2) *A grant under this section shall be awarded on the basis of a single application for a period of three years. Continued funding of a grant shall be contingent upon a grantee's successful performance, as determined by an annual review by commissioner. Any redirection of grant funds under this section shall be made only for good cause.*

(3) *The commissioner shall establish a fair, transparent, and predictable process for evaluating grant applications, shall document the rationale for each decision, and shall establish performance measures to evaluate investigative and prosecutorial efforts.*

(f) (1) If the commissioner determines that no district attorney is willing or able to investigate and prosecute the workers' compensation fraud claims or claims relating to the willful failure to secure the payment of workers' compensation arising in the nonparticipating county, the commissioner, with the advice and consent of the Fraud Assessment Commission, may award to the Attorney General some or all of the funds previously awarded to the nonparticipating county. Before the commissioner may award any funds, the Attorney General shall submit to the commissioner an application setting forth in detail his or her proposed use of any funds provided and agreeing that any funds awarded shall be used solely for investigating and prosecuting

1 those cases of workers' compensation fraud or claims relating to  
2 the willful failure to secure the payment of workers'  
3 compensation that are redirected pursuant to this subdivision.  
4 The Attorney General shall submit an annual report to the  
5 commissioner with respect to the success of the fraud prosecution  
6 efforts of his or her office.

7 ~~(3)–~~

8 (2) Neither the Attorney General nor any district attorney shall  
9 be required to relinquish control of any investigation or  
10 prosecution undertaken pursuant to this subdivision unless the  
11 commissioner determines that satisfactory progress is no longer  
12 being made on the case or the case has been abandoned.

13 ~~(4)–~~

14 (3) A county that has become a nonparticipating county due to  
15 the inability or unwillingness of its district attorney to investigate  
16 and prosecute workers' compensation fraud or the willful failure  
17 to secure the payment of workers' compensation shall not  
18 become eligible to receive funding under this section until it has  
19 submitted a new application that meets the requirements of  
20 subdivision (d) and the applicable regulations.

21 ~~(f)–~~

22 (g) If in any fiscal year the ~~Bureau of Fraudulent Claims~~  
23 *Fraud Division* does not use all of the funds made available to it  
24 under subdivision (d), any remaining funds may be distributed to  
25 district attorneys pursuant to a determination by the  
26 commissioner in accordance with the same procedures set forth  
27 in subdivision (d).

28 ~~(g)–~~

29 (h) The commissioner shall adopt rules and regulations to  
30 implement this section in accordance with the rulemaking  
31 provisions of the Administrative Procedure Act (Chapter 3.5  
32 (commencing with Section 11340) of Part 1 of Division 3 of Title  
33 2 of the Government Code). Included in the rules and regulations  
34 shall be the criteria for redistributing funds to district attorneys  
35 and the Attorney General. The adoption of the rules and  
36 regulations shall be deemed to be an emergency and necessary  
37 for the immediate preservation of the public peace, health, and  
38 safety, or general welfare.

39 ~~(h)–~~

1 (i) The department shall report on an annual basis to the  
2 Legislature and the Fraud Assessment Commission on the  
3 activities of the ~~Bureau of Fraudulent Claims~~ *Fraud Division* and  
4 district attorneys supported by the funds provided by this section.

5 The annual report shall include, but is not limited to, all of the  
6 following information for the department and each district  
7 attorney's office:

8 (1) All allocations, distributions, and expenditures of funds.

9 (2) The number of search warrants issued.

10 (3) The number of arrests and prosecutions, and the aggregate  
11 number of parties involved in each.

12 (4) The number of convictions and the names of all convicted  
13 fraud perpetrators.

14 (5) The estimated value of all assets frozen, penalties assessed,  
15 and restitutions made for each conviction.

16 (6) Any additional items necessary to fully inform the Fraud  
17 Assessment Commission and the Legislature of the  
18 fraud-fighting efforts financed through this section.

19 ~~(i)~~

20 (j) In order to meet the requirements of subdivision (g), the  
21 department shall submit a biannual information request to those  
22 district attorneys who have applied for and received funding  
23 through the annual assessment process under this section.

24 ~~(j)~~

25 (k) Assessments levied or collected to fight workers'  
26 compensation fraud and insurance fraud are not taxes. Those  
27 funds are entrusted to the state to fight fraud and the willful  
28 failure to secure the payment of workers' compensation by  
29 funding state and local investigation and prosecution efforts.  
30 Accordingly, any funds resulting from assessments, fees,  
31 penalties, fines, restitution, or recovery of costs of investigation  
32 and prosecution deposited in the Insurance Fund shall not be  
33 deemed "unexpended" funds for any purpose and, if remaining in  
34 that account at the end of any fiscal year, shall be applied as  
35 provided in subdivision (f) and to offset or augment subsequent  
36 years' program funding.

37 ~~(k)~~

38 (l) The Bureau of State Audits shall evaluate the effectiveness  
39 of the efforts of the Fraud Assessment Commission, the ~~Bureau~~  
40 ~~of Fraudulent Claims~~ *Fraud Division*, the Department of

1 Insurance, and the Department of Industrial Relations, as well as  
2 local law enforcement agencies, including district attorneys, in  
3 identifying, investigating, and prosecuting workers'  
4 compensation fraud and the willful failure to secure payment of  
5 workers' compensation. The report shall specifically identify  
6 areas of deficiencies. Included in this report shall be  
7 recommendations on whether the current program provides the  
8 appropriate levels of accountability for those responsible for the  
9 allocation and expenditure of funds raised from the assessment  
10 provided in this section. The Bureau of State Audits shall submit  
11 a report to the Chairperson of the Senate Committee on Labor  
12 and Industrial Relations and the Chairperson of the Assembly  
13 Committee on Insurance on or before May 1, 2004.